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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/980,484

03/25/2002

Jacques Alexandre Hatzfeld'

USB 99 AH CNR SOMA

5595

466

7590

11/29/2007

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EXAMINER

TON, THAIAN N

ART UNIT

PAPER NUMBER

1632

MAIL DATE

DELIVERY MODE

11/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/980,484	HATZFELD ET AL.	
	Examiner	Art Unit	
	Thaian N. Ton	1632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 27 August 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____
- Claim(s) objected to: _____
- Claim(s) rejected: 1,8,9,11 and 33-36
- Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Thaian N. Ton/
Primary Examiner
Art Unit 1632

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claims 21-26, 28-37, under 112, 1st paragraph. Applicants have now amended the claims to recite utilizing TGF-beta with hematopoietic stem cells. The new matter rejection of claims 21-26 and 28-32, in view of Applicants' cancellation of the claims.

Continuation of 11. does NOT place the application in condition for allowance because: The prior rejection of claims 1,8,9,11 and 33-36 under 35 USC 103(a) as being unpatentable over Hatzfeld when taken with Fortunel is maintained for reasons of record. Applicants' arguments have been carefully considered, but are not persuasive. In particular, Applicants have argued that the combination of art is, at best, cumulative to that which is already disclosed in the present specification. Applicants argue that both publications discussing using a HPP-Q assay, but that this assay was used to evaluate differentiation potential of stem cells. Accordingly, the prior art uses their methods in order to study development of the stem cells. Applicants argue that the HPP-Q assay is understood, to be a diagnostic test of the differentiation. See pages 7-8 of the Response. Additionally, Applicants argue that neither Hatzfeld nor Fortunel disclose a process of stem cell production which allows maintaining cells in an undifferentiated state while allowing their proliferation, and there is no recognition of repeatedly practicing the steps recited in the claims to increase the number of cells. Applicants argue that the purpose of Hatzfeld differs from the claimed invention because they are looking at expansion, and not self-renewal. See page 8 Applicants argue that neither of the cited art disclose a process as instantly claimed. See page 9.

These arguments have been considered, but are not persuasive. As stated in the prior Office Action, the specification teaches utilizing the HPPQ test for maintaining HSCs at rest, and similarly that Hatzfeld teach using this assay for expansion of HSCs. Additionally, Applicants continue to argue limitations that are not in the claims. Although the combined art may teach using their methods for short-term proliferation, the claims are not limited to any time frame in which the HSCs are maintained in a non-differentiated state. Seeing that the combined art teaches the exact same culture conditions and cell types as that required by the claims, this would necessarily and inherently result in maintain the cells in an undifferentiated state. See also, pages 14-16 of the Final Office action, mailed 3/27/07. With regard to repeatedly practicing the method steps, Fortunel clearly teaches changing culture medium (p.1869, 2nd col, 1st full ¶), which clearly constitutes a repetition of the steps required by the claims. In summary, it is maintained that because the combination of cited art fulfills the limitations of the claims, it renders the claimed invention obvious. Furthermore, it is reiterated that the reason or motivation to modify a reference for a purpose other than that which the claimed invention is concerned is completely proper in the context of obviousness. The prior rejection is maintained.